

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA

IN RE: . Case No. 09-31703 (KRH)  
. .  
GREENBRIER HOTEL .  
CORPORATION, et al., .  
. 701 East Broad Street  
. Richmond, VA 23219  
. .  
Debtors. . April 8, 2009  
. . . . . 2:04 p.m.

R E D A C T E D T R A N S C R I P T

TRANSCRIPT OF HEARING  
BEFORE HONORABLE KEVIN R. HUENNEKENS  
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtors: McGuireWoods LLC  
By: DION W. HAYES, ESQ.  
AARON G. MCCOLLOUGH, ESQ.  
One James Center  
901 East Cary Street  
Richmond, VA 23219

For Greenbrier Council  
of Labor Unions: Guerrieri, Edmond, Clayman & Bartos  
By: JOSEPH GUERRIERI, JR., ESQ.  
1625 Massachusetts Avenue, N.W.  
Suite 700  
Washington, DC

For the U.S. Trustee: Office of the U.S. Trustee  
By: ROBERT B. VAN ARSDALE, ESQ.  
200 Granby Street, Room 625  
Norfolk, VA

Proceedings recorded by electronic sound recording, transcript  
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I N D E X

WITNESS FOR THE DEBTORS:

PAGE

Michael McGovern [Testimony redacted]

1 COURT CLERK: All rise. The United States Bankruptcy  
2 Court for the Eastern District of Virginia is now in session.  
3 The Honorable Kevin R. Huennekens presiding. Please be seated  
4 and come to order.

5 UNIDENTIFIED FEMALE SPEAKER: The matter of  
6 Greenbrier Hotel Corporation.

7 MR. HAYES: Good afternoon, Your Honor.

8 THE COURT: Good afternoon, Mr. Hayes.

9 MR. HAYES: Dion Hayes, with McGuireWoods here on  
10 behalf of the debtors.

11 Your Honor, we would propose to go through the agenda  
12 that was filed yesterday, essentially in order. We amended the  
13 agenda yesterday. If the Court needs an additional copy, I'd  
14 be happy to hand one up.

15 THE COURT: I have the amended agenda and it would be  
16 the Court's preference that you go through the amended agenda  
17 as filed.

18 MR. HAYES: Having said that, when we get to it  
19 there's one place where we wanted to move something to the  
20 back, that remains contested.

21 THE COURT: All right, very good.

22 MR. HAYES: I just wanted to trick you, Judge.

23 Item number one is uncontested. That's the  
24 application of the debtor to employ McGuireWoods as bankruptcy  
25 counsel. We would ask the Court to entertain that motion.

1 THE COURT: Any party wish to be heard in connection  
2 with the motion to employ McGuireWoods as counsel for the  
3 debtors?

4 (No audible response)

5 THE COURT: All right, that motion will be granted.

6 MR. HAYES: Item two, Your Honor, is also  
7 uncontested. It's the debtors' application to retain  
8 Protiviti, Inc., as financial advisor.

9 THE COURT: Does any party wish to be heard in  
10 connection with the motion to employ Protiviti?

11 (No audible response)

12 THE COURT: All right, that motion will also be  
13 granted.

14 MR. HAYES: Item three, Your Honor, is uncontested.  
15 It's the debtors' application to retain Dinsmore and Shohl as  
16 special labor counsel effective as of the petition date.

17 THE COURT: Does any counsel wish to be heard in  
18 connection with the motion to employ Dinsmore & Shohl as  
19 special labor counsel?

20 (No audible response).

21 THE COURT: All right, that motion will also be  
22 granted.

23 MR. HAYES: Your Honor, item number four is  
24 uncontested. It's the application of the debtors to retain  
25 Huddleston Bolen, LLP, as special corporate counsel.

1 THE COURT: Any party wish to be heard in connection  
2 with the debtors' motion to retain Huddleston & Bolen as  
3 special corporate counsel?

4 (No audible response)

5 THE COURT: That motion will be granted.

6 MR. HAYES: Your Honor, item number five is also  
7 uncontested. It's the debtors' motion to authorize the debtors  
8 to employ professionals in the ordinary course of business.

9 THE COURT: Any party wish to be heard in connection  
10 with the debtors' motion to employ professionals in the  
11 ordinary course of business?

12 (No audible response)

13 THE COURT: That motion will be granted.

14 MR. HAYES: Your Honor, item number six is the motion  
15 for final approval of our debtor-in-possession loan. At the  
16 first day hearing, Your Honor, we put on a proffer for Mr. Guy  
17 Davis, our financial advisor of Protiviti. Rather than repeat  
18 that proffer here, Your Honor, we would propose to incorporate  
19 that proffer by reference into the record at this hearing.

20 THE COURT: Any party wish to examine Mr. Davis or  
21 contest the receipt of the proffer?

22 (No audible response)

23 THE COURT: All right, the proffer is accepted.

24 MR. HAYES: And, Your Honor, this motion is also  
25 uncontested, we submitted to the Court yesterday a redline of

1 the proposed final order. There's some modest changes from the  
2 interim order and I'd like to run through those with the Court,  
3 if that's acceptable.

4 THE COURT: Go ahead.

5 MR. HAYES: Does the Court have a copy of that  
6 redline?

7 THE COURT: Yes.

8 MR. HAYES: Okay. Your Honor, we -- in several  
9 places we deleted a reference to the Creditors' Committee or  
10 the possibility of a Creditors' Committee.

11 As the Court will recall, the Court entered an order  
12 deeming us to be a small business and ordering that there would  
13 not be a Creditors' Committee. The ten day period for parties  
14 to seek reconsideration or to object or to appeal that order  
15 has passed. So, that that order, by its terms, is now final  
16 and unappealable, so we thought it appropriate to delete  
17 references to the Creditors' Committee.

18 Another material change, Your Honor, many of the  
19 changes are not material, I won't walk through all of them, but  
20 in paragraph five, Your Honor, upon further review of the books  
21 and records of the debtors, we concluded that we had overstated  
22 by approximately \$278,000 the amount of the CSX prepetition  
23 indebtedness, that is the amount of the prepetition unsecured  
24 claims that CSX holds against the debtors and that change was  
25 made in paragraph 5A of the final order.

1           The order, Your Honor, is without prejudice to the  
2 right of CSX to file additional claims against the debtors by  
3 the bar date.

4           THE COURT: All right, very good.

5           MR. HAYES: That latter point, Your Honor, is made  
6 express at the end of paragraph 31, in which we indicated that  
7 the order is without prejudice to the rights of the prepetition  
8 lender, to assert any other prepetition claims.

9           Your Honor, those are the only material changes to  
10 the final order, as compared to the interim order, and based on  
11 the record from the prior hearing and the lack of any  
12 objections to the DIP loan, Your Honor, we would ask the Court  
13 to grant the motion for final approval of the DIP loan.

14           THE COURT: Does any party wish to be heard in  
15 connection with final approval of the debtor-in-possession  
16 financing?

17                               (No audible response)

18           THE COURT: All right, that will be granted.

19           MR. HAYES: Your Honor, item seven and eight relate  
20 to the retention and severance plan that the debtors are  
21 seeking approval for. Those items, or at least the retention  
22 and severance plan itself, remains subject to an unresolved  
23 objection, so we would propose, Your Honor, to move that to the  
24 back of the docket.

25           THE COURT: That's fine.

1 MR. HAYES: Your Honor, the next item that we wanted  
2 to take up was item number nine, which we are pleased to report  
3 we've been able to resolve the objection to that. That was  
4 filed by the unions. This is our motion relating to the sale  
5 of the hotel to Marriott and all the relief that we're seeking  
6 today is only the approval of the bidding procedures and the  
7 approval of certain bidding protections.

8 Your Honor, this is the first step in what we hope  
9 will lead to a robust auction on June 12th and a sale hearing  
10 in conjunction with a confirmation hearing on June 17, before  
11 Your Honor.

12 As the Court was informed at the last hearing, there  
13 was an extensive marketing effort for the debtors' assets,  
14 prepetition, led by Goldman Sachs. The culmination of that  
15 effort was the negotiation and execution, prepetition, of an  
16 asset purchase agreement with the Marriott. The terms of that  
17 transaction are set forth in the motion, were the subject of  
18 some discussion at the last hearing.

19 In connection with that, Your Honor, the bidding  
20 procedures are what we would deem to be fairly typical of sales  
21 that this Court has approved in recent cases, Your Honor. We  
22 propose that June 8 be the deadline for overbids. We propose  
23 an auction on June 12 if overbids are received and we have  
24 reserved June 17 for the sale hearing.

25 The objections that have been raised to the motion



1 are essentially twofold. The first one, Your Honor, is that  
2 the sale motion refers to the sale order, which is not before  
3 the Court today, containing a provision that waives the ten day  
4 stay of its effectiveness. We've had discussions with union  
5 counsel before hearing and we've agreed that we will argue that  
6 issue before Your Honor in June, when that order is actually  
7 before the Court and that we need not take up the Court's time  
8 with that issue today.

9           The other issue that the union raised in connection  
10 with the bidding procedures relates to attendance at the  
11 auction. The objection that the union filed asked the Court to  
12 require that that auction be a public auction.

13           For a variety of reasons, Your Honor, the debtors  
14 believe that's not appropriate in this case and it would be  
15 atypical for other auctions that have had procedures that this  
16 Court has approved. The debtors have well in excess of a  
17 thousand employees, well in excess of a thousand creditors.  
18 It's our desire to have the auction be in a conference room  
19 rather than a gymnasium, and not be in a public setting.

20           Your Honor, we have signed with a number of  
21 interested parties confidentiality agreements. Those  
22 confidentiality agreements, in many instances go both ways in  
23 that they agree to keep confidential the debtors' information  
24 that they learn through diligence and we agree to keep  
25 confidential the fact that they're expressing interest in our

1 assets, at least until we are required to share their name with  
2 the Court.

3           Your Honor, we think that having a public auction,  
4 with the participation of employees, vendors, the media, would  
5 chill bidding. Many of those interested parties, we believe,  
6 would not participate in the auction, that would not result in  
7 the maximization of value. So, we oppose any effort to have  
8 the auction be a public auction.

9           Having said that, Your Honor, we and Marriott, and  
10 CSX, are not opposed to the unions attending the auction. This  
11 case, contrary to some of the assertions in the pleadings, has  
12 never been about secrecy, has never been about trying to push  
13 through a process without union participation.

14           As the Court will recall from the first hearing, this  
15 transaction as currently structured, does not close unless and  
16 until there are new collective bargaining agreements entered  
17 into by the debtors and the unions which are acceptable to  
18 Marriott or whoever is the ultimate purchaser after an auction.

19           Your Honor, the DIP loan that the Court has approved,  
20 has a deadline of June 10, by which the debtors must have  
21 entered into those new collective bargaining agreements. It's  
22 my belief, Your Honor, that if we do not have those new  
23 collective bargaining agreements by June 10 there will, in all  
24 likelihood, not be an auction because the debtor will be unable  
25 to continue operations without the ability to borrow under its

1 DIP loan.

2           So, we had discussions, Your Honor, with the union  
3 counsel and we think we've reached the following agreement and  
4 I think -- I invite union counsel to correct the record if this  
5 is not accurate.

6           But, we would be agreeable, Your Honor, to two  
7 representatives of the unions attending the auction with  
8 counsel. It's the understanding of the debtors that they would  
9 be essentially silent observers, not active participants in the  
10 auction. We don't want an environment at the auction to chill  
11 bidding in any respect, but we welcome their attendance at the  
12 auction and I believe that that can be reflected in a revised  
13 bidding procedures order, Your Honor, and I think that would  
14 resolve the only outstanding objection to that motion.

15           THE COURT: All right, thank you.

16           MR. GUERRIERI: Your Honor, the only thing I would  
17 add to that is I think --

18           THE COURT: Sir, if you'd come to the podium, please,  
19 and identify yourself for the record.

20           MR. GUERRIERI: Your Honor, my name is Joseph  
21 Guerrieri. I am counsel to the nine unions which we will call  
22 the Greenbrier labor council and counsel's representations are  
23 correct. I just wanted to add, he characterized our role as  
24 that of silent observers, but we would expect to have access to  
25 information so that we would understand the proceedings, and

1 that is the only thing I wanted to add to what I believe is our  
2 stipulation.

3 THE COURT: Well, would you be willing to enter into  
4 the confidentiality agreements that other parties would be  
5 required to?

6 MR. GUERRIERI: Of course. Of course, we would.

7 THE COURT: All right, very good. Thanks.

8 MR. GUERRIERI: And we've done that in the past.

9 THE COURT: All right, very good, thank you.

10 MR. HAYES: Your Honor, we can work with union  
11 counsel on language for the order and on appropriate language,  
12 we might prefer a protective order to a private confidentiality  
13 agreement, but we'll work with them to arrange facilitating  
14 their attendance at the auction.

15 THE COURT: Just as long as it's on the same terms  
16 and conditions as other parties would be required to do.

17 MR. HAYES: Yes, sir. Your Honor, with resolving  
18 that objection, what we'd like to do next is make a proffer of  
19 the testimony of Mr. Michael McGovern, the debtors' CFO, in  
20 support of the bidding procedures and the bidder protections.

21 THE COURT: Is Mr. McGovern in the courtroom?

22 MR. HAYES: Yes, sir. Mr. McGovern is seated next to  
23 me and is available for cross examination.

24 Mr. McGovern would testify that he is a graduate of  
25 MIT in 1989 with a degree in mechanical engineering. He has a

1 masters in transportation and logistics from MIT, received in  
2 1991. He has been a full time employee of CSX, or its  
3 subsidiaries, since 1991. He formally became the Chief  
4 Financial Officer of the Greenbrier in January of this year.  
5 From December 2006 through March of 2007, he served as the  
6 interim CFO at the Greenbrier.

7           Mr. McGovern would testify that he was involved in  
8 the prepetition marketing and sale process, that he was  
9 involved in the effort to negotiate an asset purchase agreement  
10 and related documents with Marriott, that he reviewed drafts of  
11 those documents.

12           He would testify that the bid procedures order, which  
13 is before the Court is a requirement, both of the Marriott  
14 asset purchase agreement, that that order be entered and, Your  
15 Honor, it is also a requirement under the debtor-in-possession  
16 loan, which the Court approved, that that bidding procedures  
17 order be approved in a form acceptable to the DIP lender and to  
18 Marriott, no later than April 13, otherwise we would be in  
19 default under our DIP loan.

20           Your Honor, Mr. McGovern would testify that he  
21 believes the bid procedures are designed to maximize the sale  
22 value of the assets, that there is great benefit to the estate  
23 from having a stalking horse and that is why the debtor worked  
24 very hard to obtain a stalking horse. The participation of a  
25 stalking horse sets the floor for other bidders to bid against.

1 Mr. McGovern would testify that it's his belief that  
2 Marriott would not serve as stalking horse without the bid  
3 protections that are contained in the proposed bidding  
4 procedures. Those bid protections include a \$2 million breakup  
5 fee and an expense reimbursement capped at \$600,000.

6 Mr. McGovern would testify that those amounts were  
7 the subject of negotiation and are reasonable in amount and  
8 that the bidder protections benefit the debtor and benefit the  
9 sale process and are a necessary part of the procedures.

10 Your Honor, that would conclude the proffer from Mr.  
11 McGovern in support of the bid procedures.

12 THE COURT: All right, thank you. Does any party  
13 wish to cross examine Mr. McGovern in connection with the  
14 proffered testimony?

15 (No audible response)

16 THE COURT: All right. The proffered testimony of  
17 Mr. McGovern will be received.

18 MR. HAYES: Your Honor, now I'd just like to run  
19 through briefly some changes in the bid procedures order from  
20 the version that was submitted originally with the sale motion,  
21 and this redline was also filed with the Court yesterday. I  
22 have an extra copy if the Court needs a copy.

23 THE COURT: If you have an extra copy of that, the  
24 Court would like that. Thank you.

25 MR. HAYES: Your Honor, similar to the DIP loan

1 order, this order now deletes references to a Creditors'  
2 Committee. And, this order, of course, will be further revised  
3 to address the compromise put on the record today with the  
4 union.

5 Your Honor, the other material changes that I'd like  
6 to highlight, paragraph 15, we've expanded the publications in  
7 which we will publish the sale notice, to include both  
8 Charleston, West Virginia Daily newspapers.

9 Your Honor, in paragraph 17, we have moved up by five  
10 days the deadline by which parties in interest must file  
11 objections to the sale. Your Honor we thought that making  
12 those objections due June 5 still gave the parties in interest  
13 ample time to object to the sale motion, but, perhaps more  
14 importantly, Your Honor, or at least as importantly, would give  
15 the debtors additional time before the sale hearing to work to  
16 resolve any objections and that change is reflected in  
17 paragraph 17 of the redline bidding procedures order.

18 Your Honor, in the bidding procedures --

19 THE COURT: Let me understand the sale, the auction  
20 is conducted on June 12 and so, this objection to the approval  
21 of the sale is going to have to -- objections have to be before  
22 the auction?

23 MR. HAYES: It will be, Your Honor, but we have an  
24 obligation under the order to file a notice with the Court  
25 promptly after conclusion of the auction, to indicate who the

1 winner of the auction is. And the sale hearing would be on  
2 June 17. To the extent parties have new objections, or need to  
3 supplement a sale objection as a result of the identification  
4 of a new winner of the auction or a new purchaser, we would  
5 anticipate that if those objections relate to the identity of  
6 the new purchaser, that they could be filed after that date.

7 THE COURT: What if somebody has an objection to the  
8 -- some irregularity regarding procedures of the auction  
9 itself, they'd be able to object to that?

10 MR. HAYES: We would hope that won't happen but, yes,  
11 sir, that objection could be --

12 THE COURT: I would hope it wouldn't happen either  
13 but we've seen that happen in some circumstances.

14 MR. HAYES: That objection would necessarily be filed  
15 after the auction.

16 THE COURT: Okay. So, what is a party objecting to  
17 as of June 5?

18 MR. HAYES: Well, this would be an objection to the  
19 sale of assets, free and clear of liens, if there's a lien  
20 holder that thinks that his collateral cannot be sold free and  
21 clear of his liens, he would file those objections, those type  
22 of objections.

23 THE COURT: Okay. Very good.

24 MR. HAYES: Your Honor, the next change that I would  
25 deem material is on Page 2 of Exhibit 1 to this order, which is



1 the bidding procedures. And, we just changed the notice party  
2 to be me, if parties have diligence related requests of the  
3 debtors and that's just because on our team that's how that  
4 role has evolved. It's not necessarily a major change.

5 And then, Your Honor, the third to last page of the  
6 documents you have, paragraph five in the sale notice, contains  
7 the June 5 sale objection date that we referred to earlier.

8 Your Honor, we'll be submitting a revised bidding  
9 procedures order to address the union issue we discussed this  
10 morning, but that's all of our presentation, Your Honor, in  
11 support of the bidding procedures order.

12 THE COURT: All right, thank you, Mr. Hayes. Doe any  
13 party wish to be heard in connection with the debtors' motion  
14 to approve the bid procedures relating to the sale of its  
15 assets?

16 (No audible response)

17 THE COURT: All right. Then subject to the agreement  
18 that you've reached with the unions, the Court will approve the  
19 bidding procedures.

20 MR. HAYES: Thank you, Your Honor. The next item on  
21 the agenda that my colleague Mr. McCollough will address is  
22 item number ten, which is a motion for relief from automatic  
23 stay.

24 THE COURT: All right, thank you.

25 MR. MCCOLLOUGH: Good afternoon, Your Honor, Aaron

1 McCollough of McGuireWoods for the debtors.

2 Your Honor, the next item on the agenda is a  
3 preliminary hearing on a motion filed by Ms. Mazie Green, pro  
4 se, for relief from the automatic stay.

5 THE COURT: Is Ms. Green in the courtroom?

6 MS. GREEN: Yes, Your Honor, I am.

7 THE COURT: Okay, thank you. All right, you may  
8 proceed.

9 MR. MCCOLLOUGH: And, I presume you would ask Ms.  
10 Green to present her motion?

11 THE COURT: Ms. Green, you wish to present your  
12 motion?

13 MS. GREEN: I'll try.

14 THE COURT: Would you please identify yourself for  
15 the record.

16 MS. GREEN: Yes, I'm Mazie C. Green and I'm  
17 representing myself, pro se.

18 THE COURT: All right. And, you know you're entitled  
19 to have counsel represent you if you want?

20 MS. GREEN: Yes, sir.

21 THE COURT: Okay. Are you represented by counsel in  
22 the underlying litigation?

23 MS. GREEN: No, sir, I'm not.

24 THE COURT: Okay. And, you wish to proceed pro se on  
25 this motion today?

1 MS. GREEN: Yes, sir, I do.

2 THE COURT: Okay. You may proceed.

3 MS. GREEN: Okay. On June 7th, 2007, I filed a  
4 discrimination complaint with the United States District Court  
5 for the Southern District of West Virginia at Beckley, after  
6 being issued a right to sue order by the Equal Employment  
7 Opportunity Commission.

8 This complaint alleged violations of federal law, the  
9 Americans With Disability Act and Title 7 of the Civil Rights  
10 Act of 1964, with the court having jurisdiction pursuant to 42  
11 U.S.C. Section 1981.

12 A pretrial meeting was scheduled for March 23rd, 2009  
13 and the trial was scheduled for April the 14th, 2009, but it  
14 was canceled due to the automatic stay. I believe good cause  
15 exists to modify the stay.

16 Public policy. Employees may not be retaliated  
17 against or terminated for filing a charge of discrimination  
18 with the government agency. I had filed a charge with the West  
19 Virginia Human Rights Commission in 2003. And I had also filed  
20 charges with the Equal Employment Opportunity Commission, as  
21 protective activity. I had also filed complaints with the  
22 union, Union Local 863.

23 It is unlawful for an employer to coerce, intimidate,  
24 threaten and interfere with any individual, in the exercise or  
25 enjoyment of or on account of his or her having exercised or

1 enjoyed, or having aided or abetted, which I didn't do, any  
2 right granted by this act.

3           The delay imposed by the automatic stay will not be  
4 minimal. The case was ready for trial. There were motions  
5 that the judge needed to decide that -- well, we were hoping to  
6 decide in the pretrial meeting.

7           As I said, I represented myself, pro se. It took a  
8 lot of work on my behalf, to file the complaint with the  
9 federal court. It took a lot of work on my behalf to try and  
10 obtain witnesses. If the Greenbrier is allowed to sell the  
11 hotel, I'll lose all my witnesses.

12           THE COURT: Why is that?

13           MS. GREEN: Because I have no guarantee that the  
14 management -- a lot of my witnesses are management. I have no  
15 guarantee that those managers are going to still be there. I  
16 have -- I don't know the managers address. The subpoenas that  
17 were supposed to be issued were to be issued to the employer's  
18 address. I had requested earlier, during discovery, for the  
19 employer to give the home addresses and they wouldn't.

20           I had worked for the Greenbrier for 25 years, I had  
21 --

22           THE COURT: Have you conducted depositions of these  
23 individuals?

24           MS. GREEN: No, no.

25           THE COURT: Okay.

1 MS. GREEN: I didn't have money, I'll be honest. I  
2 did not have money to do that. I had worked for the Greenbrier  
3 for 25 years, I was injured at work. I had life insurance,  
4 401k, vacation, weekends off, bonuses, dental insurance. I had  
5 excellent credit.

6 It's taken an extreme amount of time in order for me  
7 to fight for my federally protected rights and I do believe  
8 that these are my federally protected rights.

9 And, I would like for the Court to allow me to  
10 continue with this lawsuit.

11 THE COURT: Tell me why you can't continue with that  
12 lawsuit in this court?

13 MS. GREEN: In this court?

14 THE COURT: Yes.

15 MS. GREEN: Because there's so many that my --

16 THE COURT: I mean the way that bankruptcy works  
17 generally, is that all of the assets come into this court, and  
18 they're liquidated and then there will be funds to distribute  
19 to the creditors of the estate. If you are a creditor of the  
20 estate, there's a procedure, then for all creditors, not just  
21 you, but every other creditor, to come in and file a claim in  
22 this court. If your claim is disputed by the debtor, then the  
23 Court resolves the claim and then you would receive your pro  
24 rata share of the distribution from the estate as well as  
25 everybody else. It's a collective process to resolve all

1 claims. Why would we go outside of that procedure in this  
2 case, for your claim?

3 MS. GREEN: Because my case involves a mixture of  
4 things that the District Court in Beckley is aware of. I filed  
5 a lot of motions, the Greenbrier has filed a lot of motions,  
6 that still need to be decided.

7 And, it's just like I say, it's against public policy  
8 to retaliate against an employee. I had filed -- I had  
9 complained about race discrimination, I had been injured on my  
10 job, I asked to be accommodated, they refused to even talk to  
11 me about accommodation.

12 I filed a complaint. I filed a complaint with the  
13 Human Rights Commission, I filed a complaint with the EEOC,  
14 after I was terminated. I had filed a complaint -- they had  
15 made me take functional capacity evaluations. They made me  
16 take three functional capacity evaluations.

17 But they had accommodated another white waitress and  
18 she didn't have to take functional -- but they refused to  
19 accommodate me and they refused to even talk with me after I,  
20 you know, I had -- and they were aware of these complaints.

21 The labor relations manager at the Greenbrier, he was  
22 aware, they denied that they were aware of them, but they were  
23 aware of them.

24 THE COURT: All right, very good. Anything further?

25 MS. GREEN: I don't think so, Your Honor.

1 THE COURT: All right, Ms. Green, thank you very  
2 much. Let me hear from counsel for the debtor.

3 MS. GREEN: Thank you, sir.

4 THE COURT: Mr. McCollough.

5 MR. MCCOLLOUGH: Thank you, Your Honor. Your Honor,  
6 turning from the merits of the litigation to the motion for  
7 relief from stay, I think what we've heard is that the  
8 principle allegation of cause that would support relief is  
9 delay and delay is one consequence of a Chapter 11 filing that  
10 not only affects Ms. Green, but affects every other creditor of  
11 the estate, and that's for a good reason, that the debtors are  
12 entitled to their breathing space from the assertions of claims  
13 by creditors, including litigation claimants. Ms. Green is not  
14 the only party that has asserted litigation against the debtors  
15 and the other litigations are also stayed.

16 Your Honor, we heard Ms. Green state that a number of  
17 her witnesses will be management of the debtors. A lot of that  
18 management that would have to be involved in trial preparation  
19 here are also directly responsible for many of the key issues  
20 in this bankruptcy case, including labor negotiations and  
21 employee relations and for those management to be distracted  
22 through trial preparation on liquidation of a prepetition  
23 claim, we just don't feel that that would be constructive and  
24 would not constitute cause for relief from the automatic stay.

25 THE COURT: Well, Ms. Green made the point that the

1 trial was scheduled, or is scheduled, rather, for April 14.  
2 Hasn't all the trial preparation already been concluded and  
3 such and would we just -- would it make more sense to not lose  
4 the benefit of all the preparation that's already gone on in  
5 this case, so that we can get this claim liquidated at least,  
6 you know, going forward?

7 MR. MCCOLLOUGH: Well, Your Honor, the trial date  
8 certainly is scheduled, was scheduled for that date, before the  
9 district court judge stayed the action until, according to the  
10 judge's order, until the conclusion of this bankruptcy  
11 proceeding.

12 Your Honor, the motion for relief from stay was filed  
13 two days after the Chapter 11 petition was filed and given the  
14 circumstances of this case, whereas, you know, Your Honor,  
15 we're on a very tight time line. The debtors' employees, as  
16 you may hear a little later, also are stretched very thin  
17 already and these additional distractions for the liquidation  
18 of a claim, it's the debtors' position that the judicial  
19 economy that may result from that would not overcome the burden  
20 that the debtors would face by having to deal with this  
21 distraction. And while there have been pretrial motions that  
22 have been filed, there still remains a great deal of trial  
23 preparation to go, in terms of dealing with potential witnesses  
24 and the management that would necessarily be witnesses in these  
25 proceedings.



1 THE COURT: All right. The other point that Ms.  
2 Green raised, was the fact that, perhaps, some of her witnesses  
3 wouldn't be available in the future if there was delay. Can  
4 you address that issue?

5 MR. McCOLLOUGH: Your Honor, we anticipate, as the  
6 Court well knows, moving quickly to confirmation of a plan and  
7 we would anticipate dealing with liquidation and any disputes  
8 with regard to prepetition claims soon thereafter.

9 And, so, we anticipate moving very quickly, and while  
10 there is some delay that inevitably would result, we would move  
11 the process along and we feel that that short delay would not  
12 necessarily result in a loss of availability of witnesses.

13 THE COURT: With the anticipated sale in June, you'd  
14 be able to get to the claims resolution process and start  
15 dealing with that, perhaps, by the end of the summer?

16 MR. McCOLLOUGH: That would be the debtors' hope,  
17 Your Honor.

18 THE COURT: All right. Anything further?

19 MR. McCOLLOUGH: No, Your Honor.

20 THE COURT: Okay. Ms. Green, do you have anything  
21 further?

22 MS. GREEN: No, sir. No, Your Honor.

23 THE COURT: Okay. Ms. Green, the Court is going to  
24 deny your motion for relief from the automatic stay. The  
25 Bankruptcy Code 362(d) provides that the court can grant relief

1 for cause but I don't think that we have cause that has been  
2 established in this case by the mere delay of the trial date,  
3 especially when we have an established procedure in this court  
4 to liquidate your claim and resolve that as part of the  
5 bankruptcy process in the ordinary course. I don't think there  
6 will be undue delay, given how fast this case is going to be  
7 going and that your claim will be able to be addressed fairly  
8 shortly in this court.

9           That ruling is without prejudice to you, to renew  
10 your motion in the future if you think that there has been  
11 delay, or unnecessary delay or if other cause that you want to  
12 present to the Court comes forward, you may renew your motion  
13 for relief from stay in the future. But at this point, I'm not  
14 going to grant the relief. You are certainly free to file a  
15 proof of claim in this court for the amount of damage you think  
16 you have incurred and pursue the claim in this court.

17           Any questions on the Court's ruling, Ms. Green?

18           MS. GREEN: Like I said, I just thought it's against  
19 public policy, Your Honor. I thought that discrimination is  
20 something that's still relevant in this society.

21           THE COURT: And the claim will certainly be  
22 addressed. I'm not saying that you do not have a claim, or  
23 your claim is without merit. That's certainly not what this  
24 Court is saying at all and I'm not saying that the kinds of  
25 activities that you're complaining about are not against public

1 policy, they certainly are, if you can prove them. I'm just  
2 saying that we have a procedure to go forward in this court to  
3 resolve those kinds of claims as well as every other kind of  
4 claim in this case and it will be properly addressed in this  
5 court. All right, thank you.

6 MR. McCOLLOUGH: Thank you, Your Honor. Mr. Hayes  
7 will present the final matters on the agenda.

8 THE COURT: All right.

9 MR. HAYES: Your Honor, the last item on the agenda  
10 that remains contested is the debtors' motion for approval of  
11 certain severance and retention plans for certain non-insider  
12 employees. The one objection was filed by the unions.

13 Your Honor, by this motion, the debtors are seeking  
14 authority to pay a fairly limited sum, to a limited group of  
15 non-insider, non-union salaried employees.

16 Your Honor, on the retention side, there are three  
17 eligible employees, the aggregate retention payments  
18 approximate \$97,000. These are prepetition agreements that  
19 were entered into with the individuals involved to try to keep  
20 them with the company, through the closing of a transaction and  
21 we are seeking authority to honor the post petition amounts  
22 that come due under those agreements, without assuming the  
23 agreements themselves.

24 We think, Your Honor, that this is within the  
25 boundaries of other retention programs that the Court has

1 approved. We're not subject to the restrictions in 503 that  
2 relate to the participation of insiders. We are subject to  
3 363's requirement that the retention plan be within the  
4 debtors' business judgment and we believe that these payments  
5 are.

6           Your Honor, the second part of this motion relates to  
7 nine individuals, who have prepetition severance agreements.  
8 Again, they're all non-insiders, they're salaried non-union  
9 employees. The aggregate amount of the severance that we're  
10 seeking authority to pay is about \$1.1 million. Each of these  
11 individuals, Your Honor, performs a very important function at  
12 the hotel. Each of them is dealing with a number of additional  
13 job requirements in light of the diligence activity that's  
14 going on with interested parties, the compliance with the  
15 additional reporting obligations of the bankruptcy process, and  
16 working to maintain the business to a closing of the sale  
17 transaction.

18           The severance that they're entitled to is one year's  
19 worth of pay and they are entitled to it in the event that they  
20 are terminated without cause, their job responsibilities are  
21 materially reduced, the debtors experience a change of control  
22 or sell their assets and the eligible employee is not offered a  
23 position with similar authority with the new owners or the  
24 eligible employee is offered a position with the new owner at a  
25 reduced salary.

1 Here, it's important to note, Your Honor, Section  
2 5.05 of the asset purchase agreement requires the Marriott to  
3 propose employment to any employees governed by the collective  
4 bargaining agreements that are employed at the time of closing.  
5 How long they retain them is up to Marriott but there is no  
6 similar requirement for non-union employees in the asset  
7 purchase agreements. So there are a number of non-union  
8 employees that are not going to have the same level of  
9 assurance at the time of closing, as union employees.

10 One of the criticisms that was made by the unions in  
11 their objection is that there is no mitigation articulated in  
12 the motion and that's an oversight on our part, Your Honor. It  
13 is longstanding practice of CSX and its subsidiaries, that in  
14 the event an employee is severed in connection with a sale of a  
15 division or a business and that employee receives severance, at  
16 the time of receipt of severance, which is payable in lump sum,  
17 the employee is required to sign an agreement that says if they  
18 take a job with the acquirer at that location within the 12  
19 months after severance, they have to give back the severance  
20 received, and that is how this program will work, Your Honor.

21 THE COURT: Have to give it back in full?

22 MR. HAYES: Have to give it back in full, that's  
23 correct. So, there is mitigation here, that is company  
24 practice and we should have indicated that in the motion but  
25 that's how this program will work, Your Honor.

1 THE COURT: Now, you say it's company practice. Is  
2 that in the severance agreements that these employees have  
3 already signed, the prepetition severance agreements?

4 MR. HAYES: It's not in the agreements they've  
5 signed, but it's in the -- actually, I'm not positive about  
6 that, but it will be in the agreement that they sign before  
7 they can receive the severance.

8 THE COURT: All right, very good.

9 MR. HAYES: Your Honor, the other criticism that was  
10 lobbied by the unions, I think, relates to the fact that the  
11 exhibit to the motion was filed under seal. The copy that was  
12 submitted to the Court under seal had the individual employee  
13 names, had their base salary and had their retention and  
14 severance amounts.

15 Your Honor, we have prepared an exhibit that deletes  
16 the names but indicates their title, and we would be prepared  
17 to share that with the union if they would agree on the record  
18 to keep it confidential, not share it with any other party, any  
19 of their union members, just with union counsel and their  
20 primary contact at the union and we can talk specifically about  
21 each of the job titles and why they're very critical to the  
22 process that the company is ongoing at the moment.

23 So, I would yield the podium, Your Honor, to see if  
24 that mechanism would be acceptable to the union. Thank you,  
25 Your Honor.

1 THE COURT: All right.

2 MR. GUERRIERI: Thank you, Your Honor. I'll endeavor  
3 to be brief.

4 THE COURT: Once again, if you'd just mention your --  
5 identify yourself for the record.

6 MR. GUERRIERI: I sure will, Your Honor.

7 THE COURT: So that we have it on the transcript if  
8 we ever need that.

9 MR. GUERRIERI: Of course. Joseph Guerrieri,  
10 representing the Greenbrier Council of Labor Unions, nine labor  
11 unions in all.

12 THE COURT: Thank you.

13 MR. GUERRIERI: Thank you, Your Honor. The reason  
14 this objection was filed was that upon reviewing the motion, it  
15 became clear to us and to our clients, that very little  
16 information was provided as to who these individuals are, why  
17 their maintenance was vital to the ongoing debtors' enterprise  
18 and why substantial adverse consequences would result if these  
19 individuals did not receive these large payoffs.

20 We are particularly concerned because as Mr. Hayes  
21 has pointed out, we are currently engaged in some very painful  
22 collective bargaining. We recognize and I have made it clear  
23 and, frankly, the various unions involved and their members, I  
24 think fully understand what the possible consequences can be of  
25 a Chapter 11 proceeding, particularly with an 1113 proceeding

1 staring us in the face.

2 But whatever agreement we reach and I am hopeful and  
3 optimistic that one will be reached, whatever agreement we  
4 reach, must be ratified by the 900 or so employees who are  
5 affected by the collective bargaining agreement.

6 When the average individual sees that what is being  
7 proffered to the Court is a key employee plan of approximately  
8 \$1.2 million, where nine individuals will receive a full year's  
9 salary, even if they are terminated, if their work duties are  
10 reduced, so the less they do, the more they will be paid,  
11 theoretically, and if they are not offered a position at the  
12 same salary that is satisfactory to them, they can leave and  
13 take a full year's salary.

14 And the fourth point is, if they're offered a job  
15 they don't just accept, they will get 100 percent of their  
16 salary. This seems to us not to be consistent with a sound  
17 business judgment and the reasonableness threshold  
18 determination that must be made in a case of this type.

19 I was pleased to hear Mr. Hayes say that it was an  
20 oversight that mitigation was not formally addressed with the  
21 Court. That was one of our larger objections, if you will,  
22 Your Honor, and that is helpful to us and is helpful in  
23 explaining what is going on in these proceedings, to the  
24 membership. And I assure you we want to cooperate fully with  
25 this proceeding because we want to see the Greenbrier



1 resurrected with as many employees as possible in place. That  
2 is our goal here, it's not to be obstructionists.

3 But when you see a motion like the, that has so  
4 little information provided, and at the time, of course, we  
5 again didn't know about the mitigation aspect of it, but so  
6 little information provided, one is left to wonder, who are  
7 these people and why are they more critical to the operation  
8 than the employees who, as the Court I'm sure is aware, are  
9 being asked --

10 THE COURT: Well, they're all employees, right?

11 MR. GUERRIERI: Yes, Your Honor. I'm talking about  
12 the rank and file. I assume these are executive position  
13 employees, or management employees that are not covered by a  
14 collective bargaining agreement, yes, but they all are  
15 employees, there's no question about it and they're all -- they  
16 all will suffer if this enterprise ceases operation.

17 THE COURT: Exactly.

18 MR. GUERRIERI: Yet, it strikes us that with so  
19 little information available to us, and to the Court, it is  
20 very difficult to make a judgment about whether these people  
21 are, in fact, vital to this operation, so vital, in fact, that  
22 nine have to be guaranteed 100 percent of their salary, and  
23 another three will be dividing something like \$90,000 over  
24 three months.

25 But, again, Your Honor, our point is that this

1 certainly does not appear reasonable, the information that has  
2 been provided does not seem adequate upon which this Court can  
3 make a judgment that this has been done in the best interest of  
4 the debtor, and as a result of careful consideration and with  
5 sound business judgment. Thank you, Your Honor.

6 THE COURT: Let me ask you this question, though,  
7 before you leave.

8 MR. GUERRIERI: Yes.

9 THE COURT: Mr. Hayes had suggested offering to you,  
10 on a confidential basis, a copy of the Exhibit B that he has  
11 prepared but just indicating the position of each of these  
12 people and the amount of the proposed severance that they would  
13 receive. Would that address your question or your concerns  
14 that you raised in your objection about the lack of information  
15 about, you know, who these people are, or are you saying that  
16 you actually need to know the names of these people?

17 MR. GUERRIERI: I don't think I need to know the  
18 names, Your Honor.

19 THE COURT: Okay.

20 MR. GUERRIERI: I don't think that's -- I don't think  
21 that was the thrust of our argument. I think it was to try to  
22 identify what are the functions of these individuals and why  
23 are they so critical to this operation, that these people  
24 should receive such favorable treatment when the represented  
25 employees are facing severe reductions, including for many,

1 maybe up to 40 percent, the loss of all healthcare. And we  
2 just think these are very serious consequences and it seems  
3 most inappropriate to be treating one group differently, so  
4 differently than another.

5 THE COURT: All right. Thank you. Then, I'm going  
6 to require that Mr. Hayes, in accordance with his offer,  
7 provide you on that confidential basis, a copy of the Exhibit B  
8 with the job titles and the amounts.

9 MR. GUERRIERI: And I think I heard Mr. Hayes say, I  
10 can share that with the principals, who are involved in the  
11 Greenbrier negotiations.

12 THE COURT: Are there -- tell me who that -- those  
13 people are. How large a group is that and how does that work?

14 MR. GUERRIERI: Well, Your Honor, actually, there are  
15 nine unions involved, but there's a chief negotiator and he  
16 has, basically, has an assistant, I think there'd be two and  
17 we'd agreed previously that two union leaders would be involved  
18 or participate, if you will, by observing the auction process.  
19 I think it would be fair to keep the same restriction in place.

20 THE COURT: That seems reasonable to me, but let me  
21 hear if Mr. Hayes has any objection to that.

22 MR. HAYES: Your Honor, if I understand what you just  
23 said, counsel for the union would receive this chart and would  
24 keep it confidential and then two representatives of the nine  
25 unions in the aggregate, so two individuals total, could

1 receive them and would also be required to keep them  
2 confidential.

3           We have it here, Your Honor, we were prepared to  
4 share it with union counsel today, share it with the Court, and  
5 request that the Court remove from the courtroom those that  
6 either did not object to the motion or are not CSX or debtor  
7 representatives because we very much do not want this  
8 information to be in the public domain. The Court has sealed  
9 similar information in other cases, and the risk is that the  
10 individual at the next desk is not getting the same treatment,  
11 is upset about that, and that is damaging to morale as a whole.  
12 So, that was our proposal, we think that deals with the secrecy  
13 allegation that the union counsel has made and if the proposal  
14 is counsel only and two representatives of the nine unions,  
15 each subject to a confidentiality obligation that we can put in  
16 a protective order, Your Honor, and submit to the Court after  
17 the hearing, that would be acceptable to us.

18           THE COURT: Okay, very good. Mr. Van Arsdale, do you  
19 wish to be heard on this procedure or what we're about to  
20 undertake?

21           MR. VAN ARSDALE: Robert Van Arsdale for the U.S.  
22 Trustee. Your Honor, I only have one point about the motion  
23 for the retention and severance programs and it is said  
24 throughout the motion, that this applies only to non-insiders  
25 and I'm not saying that I doubt that that's true, but --

1 THE COURT: I assume we're going to get some  
2 testimony along those lines.

3 MR. VAN ARSDALE: In paragraph -- okay. But in  
4 paragraph 35 they talk about a couple of the things that makes  
5 somebody an insider. But there's also a provision in 10131  
6 which talks about, you can also be, in terms of a corporation,  
7 you can also be an insider if you are relative of a director,  
8 officer or person in control of the debtor. And I don't see  
9 that covered anywhere in the papers.

10 THE COURT: All right. Well, I'm going to reserve  
11 your objection. As I understand what Mr. Hayes wants to do at  
12 this point, is to provide a copy of the exhibit to counsel for  
13 the labor unions. I'm going to also require -- I think you  
14 already have Exhibit B that was filed under seal, but if you  
15 don't, you get a copy of this, too, and then we'll clear the  
16 courtroom of anybody that has not filed an objection to this  
17 motion, or anybody that's not affiliated with the debtor and  
18 then proceed with the motion, where the debtor can put on its  
19 evidence and that sort of thing, to go forward. Do you have  
20 any objection to that procedure?

21 MR. VAN ARSDALE: No, Your Honor. That's -- I think  
22 that's an excellent idea.

23 THE COURT: Okay, very good. Mr. Hayes, do I  
24 understand what you've proposed as far as how you wish to  
25 proceed at this point?

1 MR. HAYES: Yes, sir, that's correct.

2 THE COURT: Okay. Now, the question about your DIP  
3 financier, are they allowed to remain for this or are they  
4 parties that since they didn't file an objection, need to be  
5 excluded?

6 MR. HAYES: No, Your Honor, they are permitted to  
7 stay.

8 THE COURT: Okay.

9 MR. HAYES: Our DIP lender.

10 THE COURT: Anybody else permitted to stay that  
11 wasn't on the original list of who had to be excluded?

12 MR. HAYES: No, sir, just CSX, the objector, the U.S.  
13 Trustee and the debtors.

14 THE COURT: Okay. All right. So, what we'll do at  
15 this point, we'll take a five minute recess, I'll ask the Court  
16 security officer to clear the courtroom of anybody other than  
17 those and to seal the courtroom so that we can conduct the  
18 hearing, under seal.

19 COURT CLERK: All rise. Court is now in recess.

20 (Short recess in proceedings)

21 **[Portion of transcript redacted]**

22 THE COURT: All right. All right. Let the record  
23 reflect that the doors to the courtroom have been unlocked and  
24 the courtroom has now been reopened.

25 MR. HAYES: Your Honor, we just want to reiterate the

1 applicable legal standard is whether the proposed retention and  
2 severance is within the debtors' business judgment. We believe  
3 through the testimony of Mr. McGovern we have amply  
4 demonstrated that to be the case. The company is at a very  
5 sensitive moment in terms of trying to juggle a number of balls  
6 in the air. These individuals are critical to that effort.  
7 The loss of any one of them would be devastating to our efforts  
8 to get the company to a sale closing. And, Your Honor, we  
9 really have no other presentation on this motion, but we  
10 believe we will exceed the requirements of the bankruptcy code.  
11 We have sufficient borrowing availability under our DIP loan to  
12 permit this. This is an authorized expense under our DIP loan.  
13 Our DIP lender would not authorize this expense if the DIP  
14 lender did not share the debtors' view that these payments are  
15 really critical to be able to get the company to a sale closing  
16 and we would ask the Court to favorably consider the motion.

17 THE COURT: All right, thank you. Do you wish to be  
18 heard on the motion?

19 MR. GUERRIERI: The Court has been generous in its  
20 time and I've argued fully. We would simply rely on our brief,  
21 Your Honor.

22 THE COURT: All right, thank you, sir. Any other  
23 party wish to be heard in connection with the debtors' motion?

24 (No audible response)

25 THE COURT: All right. Mr. Hayes, I understand that

1 the relief that you are asking for is that you be authorized,  
2 but not directed, to make these severance and retention  
3 payments. In other words, you're not assuming these  
4 prepetition agreements, you just want authority to make the  
5 payments under Section 503, is that correct?

6 MR. HAYES: Yes, sir, that's correct.

7 THE COURT: All right. The Court has reviewed the  
8 motion and has reviewed the response filed by the unions and  
9 based on the arguments that the Court has heard today, and the  
10 testimony of Mr. McGovern, the Court finds that it is within  
11 the sound exercise of the debtors' business judgment, to be  
12 authorized to make these severance and retention payments.

13 The Court finds that these individuals are not  
14 insiders of the debtor and so, therefore, are not subject to  
15 Section 503(c) of the bankruptcy code.

16 The Court also finds that their continued employment  
17 with the debtor is critical as they are the core leadership of  
18 the debtor and both from a financial management and from being  
19 able to operate and maintain the Greenbrier facility through  
20 this difficult time, are essential to be retained and I'm  
21 satisfied that the debtor, with the participation of Protiviti,  
22 has been able to determine that the one year of severance is  
23 sufficient to incentivize these individuals to remain with the  
24 debtor. I certainly hope that's the case. And so for all of  
25 those reasons, the Court will grant the debtors' motion.



1 Any questions regard to the Court's ruling?

2 MR. GUERRIERI: Only to note, Your Honor, that Mr.  
3 Hayes represented that mitigation was an -- omitting mitigation  
4 was an oversight and that mitigation would, indeed, be part of  
5 these agreements.

6 THE COURT: Thank you very much for that  
7 clarification. And that is exactly correct. I'd assumed that  
8 without saying it, since we had agreed to that at the  
9 beginning, but that certainly is the Court's understanding and  
10 would expect to see the order that's tendered reflect that as  
11 well.

12 MR. HAYES: That's correct, Your Honor. Two  
13 housekeeping matters relating to this. Your Honor, we have  
14 motion to seal the version of the exhibit that had individual  
15 names that was submitted to the Court. There was no opposition  
16 filed to that motion to seal and we would ask the Court to  
17 grant that motion to seal that exhibit.

18 THE COURT: That motion will be granted. And as I  
19 indicated earlier, the exhibit that you have tendered in  
20 connection with the testimony of Mr. McGovern today, will also  
21 be placed under sealed.

22 MR. HAYES: And, Your Honor, can we make similar  
23 arrangements for the portion of the transcript relating to Mr.  
24 McGovern's testimony?

25 THE COURT: Yes, you may. So that that portion of

1 the transcript can be placed under seal. There are procedures  
2 in place to be able to do that, so please follow through with  
3 that.

4 MR. HAYES: Okay. Thank you, Your Honor.

5 THE COURT: Okay, anything else that we need to take  
6 up today?

7 MR. HAYES: No, sir.

8 THE COURT: Does any other party have any business  
9 that we need to take up today?

10 (No audible response)

11 THE COURT: All right. Thank you all.

12 COURT CLERK: All rise. Court is now adjourned.

13

14

\* \* \* \* \*

C E R T I F I C A T I O N

I, ELAINE HOWELL, court approved transcriber, certify that  
the foregoing is a correct transcript from the official  
electronic sound recording of the proceedings in the  
above-entitled matter and to the best of my ability.

/s/ Elaine Howell

Date: April 29, 2009

ELAINE HOWELL

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